In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1105

MORRIS MALINSKY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was indicted in 1956 in the United States District Court for the Southern District of New York of conspiracy to obstruct interstate commerce by extortion and three substantive counts charging such obstruction. 18 U.S.C. 371, 1951. At the commencement of the third trial in 1957 (two earlier trials had resulted in mistrials), petitioner and eight co-defendants, represented by experienced counsel, entered pleas of guilty to the conspiracy

count. Before imposing sentence, the trial judge held an extensive hearing at which the factual basis of the plea was explored in great detail. Petitioner was thereafter sentenced to three years' imprisonment, service of which he long ago completed.

In 1970 petitioner instituted the present action, treated by the district court as a petition for a writ of error coram nobis. He claimed that certain statements he made at the pre-sentence hearing amounted to a denial of his guilt. The district court denied the petition in a thorough opinion (Pet. 3a-7a). It found that at the pre-sentence hearing petitioner did not deny his role as a conspirator; that his denials related to "specific acts charged to other co-conspirators"; and that his apparent purpose was to obtain leniency from the sentencing court (Pet. 5a-6a). The court further pointed out that the "[a]vailable evidence gave strong support to the prosecutor's contention that petitioner was a, if not the, leading culprit in the illegal conspiracy," which involved a plan to extort money from pickle wholesalers by threats of picketing, price cutting and assaults (Pet. 5a). The court of appeals affirmed without opinion (Pet. 1a-2a).

Petitioner contends that this case provides an appropriate vehicle to explore the impact of this Court's recent guilty plea decision in *North Carolina* v. *Alford*, No. 14, this Term, decided November 23, 1970. But this case raises no new question. As the district court found, petitioner's statements at the pre-sentence hearing were not protestations of innocence, but amounted to attempts to gain a lenient

sentence. Moreover, the *Alford* opinion suggests (slip op., pp. 6-13) that where, as here, a factual basis for guilt is shown, a defendant's guilty plea may be accepted despite denials of guilt.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1971.

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